BUREAU OF ENVIRONMENTAL REMEDIATION/REMEDIAL SECTION GUIDANCE

STATE COOPERATIVE PROGRAM

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KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
DIVISION OF ENVIRONMENT
Bureau of Environmental Remediation

GUIDE FOR THE STATE COOPERATIVE PROGRAM

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GUIDE FOR THE
STATE COOPERATIVE PROGRAM

BACKGROUND

The Kansas Department of Health and Environment (KDHE) Bureau of Environmental Remediation (BER) developed the State Cooperative Program (SCP) in 1991 to facilitate the investigation, remediation, and monitoring of contaminated sites at the state level. The SCP was developed as an alternative to the federal National Oil and Hazardous Substances Pollution Contingency Plan (NCP). Potentially Responsible Parties (PRPs) participating in the SCP may elect to follow a streamlined process employing KDHE guidance and scopes of work, or may determine to incorporate additional formal elements such as a baseline risk assessment and a community relations plan that KDHE interprets to potentially connote "NCP consistency" and the legal privileges and protections afforded therein. "NCP consistency" is an interpretive matter of law, and recent federal court decisions have further clouded that interpretation; however, the federal 10th Circuit Court found in 2002 in review of Morrison Enterprises v. McShares, Inc. that a PRP could proceed with a cost-contribution claim against another PRP because it was operating under the direction of KDHE. In 1994, KDHE and the United States Environmental Protection Agency (EPA) entered into a Cooperative Agreement initiating the State Deferral Program, which was modeled upon KDHE's SCP. The Cooperative Agreement Work Plan documents EPA's assessment of KDHE's SCP and determined that KDHE possesses the appropriate program capabilities to provide effective management of site investigations and clean-up activities and possesses capable staff to conduct PRP negotiations, litigation, and technical oversight, as well as monitoring and public involvement activities. KDHE and EPA entered into a Memorandum of Agreement further validating the role and adequacy of the SCP in 2001. Accordingly, participation of a PRP within the SCP promotes state and federal acceptance of investigative and remedial work performed.

PURPOSE

The SCP enables KDHE to implement a strong and effective remedial program that assures the protection of public health, safety, and the environment, and provides for a consistent and systematic process to address environmental contamination. The SCP was developed to provide State-lead guidance, oversight, and determinations of successful completion for responsible party-lead investigative, preventive, and/or corrective actions. A broad class of contaminated sites, excluding Superfund sites, leaking petroleum storage tank sites, dry-cleaner trust fund sites, Resource Conservation and Recovery Act (RCRA) Corrective Action sites, and landfill sites are managed by the SCP. This SCP Guide provides a description of the organizational framework supporting the program, a compendium of the program's essential elements, and a compilation of critical documents employed by program staff to effectively administer the program.

The objectives of the SCP include:

- to provide a systematic, consistent set of procedures for PRPs and their environmental consultants to investigate, remediate, and monitor KDHE-lead contaminated sites in Kansas;

- to develop and employ standardized legal documents, including Consent Orders, Interim Agreements, etc., to facilitate streamlined negotiations with consistent legal documents for various scopes of work to be performed throughout the SCP process;

- to document and approve all activities performed pursuant to the SCP process;

- to foster public awareness and involvement at all levels of the SCP process; and

- to provide a mechanism to reclassify sites as resolved.

BENEFITS

The SCP was developed by KDHE/BER to provide an alternative investigative and remedial process to the cumbersome and rigidly structured federal National Contingency Plan. Participation within the SCP provides assurance that the site will not be considered for listing on the National Priorities List or referred to EPA for future enforcement actions. Although the SCP is similar to the federal National Contingency Plan, the process allows certain flexibility not accorded by the federal program. Program flexibility affords participants the opportunity to conduct activities to mitigate environmental impacts by performing expedited interim remedial measures. Additional flexibility is demonstrated by deferring the decision to perform a site-specific baseline risk assessment to the participants. Accordingly, the flexibility of the SCP provides a measurable cost-benefit to its participants. Lastly, participation in the SCP provides assurance that investigative and remedial activities performed will be accepted by the governing regulatory agency.

AUTHORITY

General authority is provided for hazardous substance and solid waste investigation and clean-up in K.S.A. 65-3452a and K.S.A. 65-3401 et.seq. In addition, the Secretary of the Kansas Department of Health and Environment has general authority to "protect the water and soil of the state" under K.S.A. 65-161 et.seq.

SCP PROCESS

SITE IDENTIFICATION

Contaminated sites are routinely reported to the Kansas Department of Health Environment through a variety of sources. Means of site identification include: analysis of public water supplies; spills; citizen complaints; environmental audits performed on properties prior to, or as a part of, real property transactions; and by environmental investigations which identify unrelated or other sources of contamination. Sites with known or suspected environmental contamination are routinely investigated by KDHE/BER's Site Assessment Program to identify the source(s) of contamination and PRPs. A broad class of contaminated sites are managed by KDHE/BER's SCP staff, with the exception of: EPA-lead Superfund sites, RCRA Corrective Action sites, leaking storage tank sites, dry-cleaner trust fund sites, and landfill sites, among others. Contaminated sites managed within the SCP may include one or more potential contaminants of concern including, but not limited to: volatile organic compounds, semi-volatile organic compounds, pesticides, metals, and inorganic contaminants such as nitrate, chloride, etc.

POTENTIALLY RESPONSIBLE PARTY IDENTIFICATION

Upon Agency disclosure of known or suspected environmental contamination, the investigation focuses upon identifying the source(s) and PRPs. KDHE/BER's Site Assessment Program performs environmental investigations of contaminated sites where the source(s) of environmental contamination and the associated PRPs are unknown. Information request letters are frequently employed by KDHE/BER staff to gather additional information. Upon successfully identifying a source of environmental contamination, a notice is mailed to the PRP documenting the necessity to perform additional investigative and/or remedial activity at the site through KDHE/BER's SCP. The term "potentially responsible party" can be applied to a broad class of entities ranging from private individuals to large corporations and is legally defined within the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). In addition, certain state laws exist which serve to identify entities that may be legally responsible for environmental contamination.

LEGAL AGREEMENTS

Pursuant to K.S.A. 65-3453, all contaminated sites managed within the SCP are addressed through legal agreements such as Consent Orders, Administrative Orders, Interim Agreements, or other legal documents. In an effort to maintain consistency, KDHE's legal department has developed model legal documents, which serve as the foundation from which all executed legal agreements originate. Essential elements common to all legal documents executed by KDHE include: description of the scope of work to be performed; schedules for the submission of work

plans and reports, quality assurance/quality control measures, and a termination provision, among others.

SCOPES OF WORK

In an effort to describe the investigative, remedial or other appropriate activities necessary to be performed at contaminated sites, various scopes of work have been developed by KDHE/BER SCP staff. The appropriate scope of work to be performed at a given time is site-specific, dependent upon the availability of information previously collected, and is a function of the level of threat posed by the site. The scopes of work are general in nature and objective driven to provide flexibility between sites. The following is a listing of the various SCP scopes of work, available through the SCP web site, and a brief description of their applicability:

- **Preliminary Investigation** - In general, a Preliminary Investigation (PI) is performed at sites where environmental contamination is suspected. Investigative activities focus upon source identification, contaminant types, identifying affected media, and to determine the extent of contamination. In addition, a PI should identify source control or removal action opportunities, if appropriate.

- **Removal Action** - Removal action activities are performed at sites to abate, prevent, mitigate, eliminate, or stabilize the release or imminent threat of release of contaminants from a site.

- **Comprehensive Investigation** - Comprehensive Investigation (CI) activities are those actions necessary to determine the nature and full extent of contamination within each media at a site. Work performed during the CI is focused upon data collection in an effort to characterize site conditions, assess the risk to human health and the environment, and to evaluate potential corrective action alternatives to address site contamination. Where NCP consistency is sought by the PRP, the more rigorous Remedial Investigation scope of work is employed, and the performance of a site-specific Baseline Risk Assessment is mandatory.

- **Corrective Action Study** - A Corrective Action Study (CAS) is performed concurrent with the Comprehensive Investigation emphasizing data analysis collected during the CI to define corrective action goals, and to develop, screen and evaluate in detail potential corrective action alternatives. Where NCP consistency is sought by the PRP, the Feasibility Study scope of work is employed.

- **Corrective Action Plan** - Corrective Action Plan (CAP) activities are those actions performed subsequent to the selection of the appropriate corrective action. Corrective Action Plan activities include those necessary to prepare a conceptual design of the corrective action, and submission of plans and specifications for implementation of the

corrective action. Such activities may include the performance of additional data collection to support the final design.

- **Corrective Action** - Corrective Action (CA) is the process of implementing, operating and monitoring the performance of the KDHE-approved corrective action plan.

- **Interim Remedial Measures** - Interim Remedial Measures are corrective action activities deemed necessary to implement prior to determining the final remedy for the site. Interim Remedial Measures should contribute to the efficient performance of any anticipated long-term remedial action.

- **Site Monitoring** - Site Monitoring may be an appropriate course of action for certain sites to confirm that corrective action goals have been attained for sites where corrective action has been previously implemented or where corrective action is not warranted.

- **Reclassification Plan** – Following successful attainment and verification of corrective action goals, KDHE will prepare a reclassification report which briefly summarizes all activities performed at the site and provides appropriate documentation that all corrective action goals have been attained over a set period of time. The site will then be reclassified on the State of Kansas Identified Sites List to a status of "Resolved."

Frequently, two or more scopes of work may be combined to fulfill the terms of a legal agreement. The most common combinations for multiple scopes of work include: 1) Comprehensive Investigation/Corrective Action Study, or CI/CAS; and 2) Corrective Action Plan/Corrective Action, or CAP/CA. In an effort to illustrate the sequence for performing investigative or remedial activities within the SCP, please refer to the three flow charts provided as attachments to the SCP Guide. The SCP flow chart illustrates the general process from site identification through site investigation and remedy selection to site reclassification. The corrective action flow chart illustrates the process for developing corrective action design plans through implementation, operation, and monitoring impacted environmental media to confirm attainment of corrective action goals. The third flow chart illustrates the process for performance evaluation of an implemented corrective action and/or site monitoring for post-corrective action activities to document that site-specific cleanup goals are met.

PUBLIC INFORMATION PROGRAM

In an effort to foster public awareness and participation throughout the SCP process, the KDHE site project manager must develop a site-specific public information strategy plan. The site-specific public information strategy plan identifies individuals or organizations which may be potentially affected by the site, including site workers, local residents, local governing bodies, media contacts, citizen groups, etc. The public information strategy plan describes certain activities to be performed at various stages throughout the SCP process to facilitate the transfer

of information from KDHE to the affected community. Critical elements of the Public Information Program include public meetings such as availability sessions and/or public hearings. Availability sessions are generally informal and are designed to facilitate public access to the information and personnel associated with the project. Public hearings are relatively formal, and may require a hearing officer and court reporter to document KDHE's effort to inform the public and solicit comments prior to determining the appropriate site-specific corrective action.

REMEDIAL ACTION GOALS

Upon KDHE approval of site characterization, an evaluation is conducted to determine the necessity of site remediation. In general, remediation may be determined appropriate to safeguard human health or to protect valuable resources, such as drinking water supplies or surface water quality. In certain situations, site remediation is mandated to comply with local, state or federal laws that are either directly applicable or are considered relevant and appropriate requirements (ARARs). Three classes of ARARs exist, including: 1) chemical-specific ARARs, e.g., maximum contaminant levels (MCLs) established by the federal Safe Drinking Water Act for public drinking water supplies; 2) action-specific ARARs, e.g., compliance with Resource Conservation and Recovery Act (RCRA) requirements; and 3) location-specific ARARs, e.g., preservation of historic sites or site location relative to a 100-year flood plain. Participants within the SCP may elect to perform a site-specific baseline risk assessment to determine the need for and extent of site remediation. In general, risk management decisions are based upon established federal risk management guidance, which requires remedial response actions at sites where the lifetime cancer risk posed by exposure to site contamination under reasonable current and future exposure scenarios would result in one additional cancer incidence per ten thousand individuals, or where the risk hazard index for non-carcinogenic contaminants exceeds a unitless value of "one." KDHE may also elect to be more protective based on site-specific considerations, such as the express desires of potentially affected stakeholders.

As an alternative to performing a site-specific risk assessment, KDHE has developed non-site specific human health risk-based concentrations for certain chemicals in soil and ground water. The Risk-Based Standards for Kansas Manual (RSK Manual) establishes chemical-specific screening and cleanup goals that, with KDHE concurrence, may be used as corrective action objectives in lieu of performing a potentially costly site-specific baseline risk assessment. The RSK manual identifies concentrations in soil and ground water that are protective for either unrestricted use settings or sites for which future use is restricted through Environmental Use Controls. For ground water that has an actual or potential use as a drinking water source, KDHE defaults to federal Maximum Contaminant Levels (MCLs) established under the Safe Drinking Water act as cleanup goals. Where MCLs have not been established for a contaminant, the RSK manual provides ground water cleanup goals calculated according to federal guidance.

CORRECTIVE ACTION DECISION

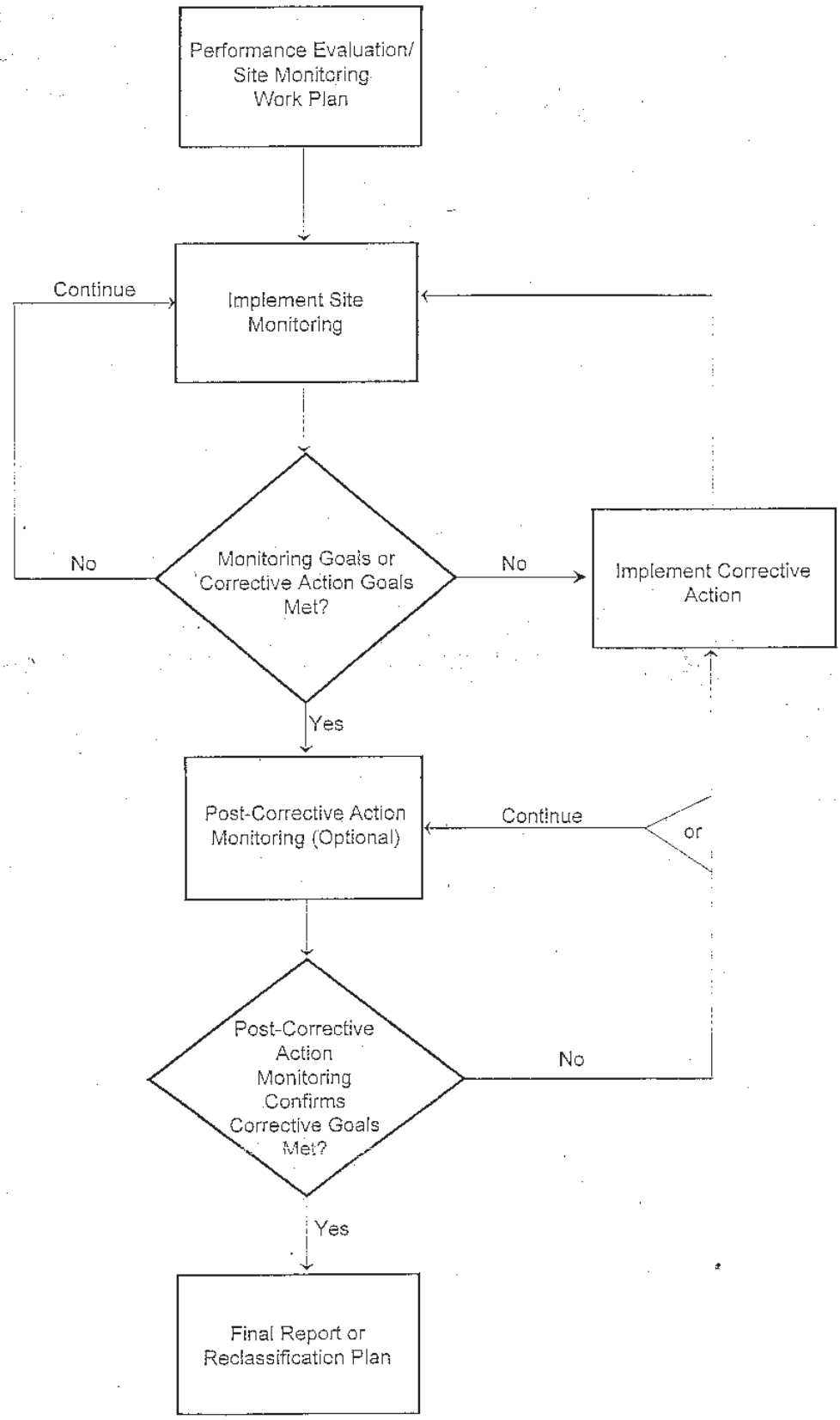
Once a PRP has completed the Comprehensive Investigation, an optional Baseline Risk Assessment, and the Corrective Action Study (CI/CAS), KDHE prepare the Draft Corrective Action Decision (CAD), which identifies the corrective action alternative preferred by KDHE. The Draft CAD is a document containing a brief summary of the site history, key findings of the site investigations, a description of the potential human health and environmental risks posed by the site, a listing of the corrective action goals, and a summary description of the various corrective action alternatives evaluated during the Corrective Action Study, including a detailed description of the corrective action alternative preferred by KDHE.

Once the Draft CAD has been prepared and approved by KDHE management, KDHE announces the availability of the Draft CAD and encourages public comment to the Agency's Draft CAD. The availability of the Draft CAD and supporting documents is announced through a public notice and press release within primary local news media. The public notice and press release serve to encourage public participation within the SCP process by announcing a public comment period to submit written comments on the Draft CAD to KDHE or, in some instances, to provide verbal comments to the Draft CAD during a public meeting sponsored by KDHE and conducted within the affected community. All comments received during the public comment period must be responded to by KDHE within the "Response to Comments Summary" section of the Final Corrective Action Decision document.

Project closure hinges upon successful attainment of site-specific remedial action goals that are protective of human health and the environment. The burden lies with the PRP to attain those goals. If remedy selected through the SCP process and Corrective Action Decision fails to attain remedial action goals within a reasonable time frame, KDHE may require that a PRP revisit the process and determine a new, more effective remedy. This iterative review will be repeated until the remedy is successful, as defined by the KDHE/BER Reclassification Plan Policy.

For additional information relative to the State Cooperative Program, please contact the Kansas Department of Health and Environment at (785) 296-1660 or (785) 296-1675.

STATE COOPERATIVE PROGRAM
PROCESS FOR
PERFORMANCE EVALUATION/SITE MONITORING



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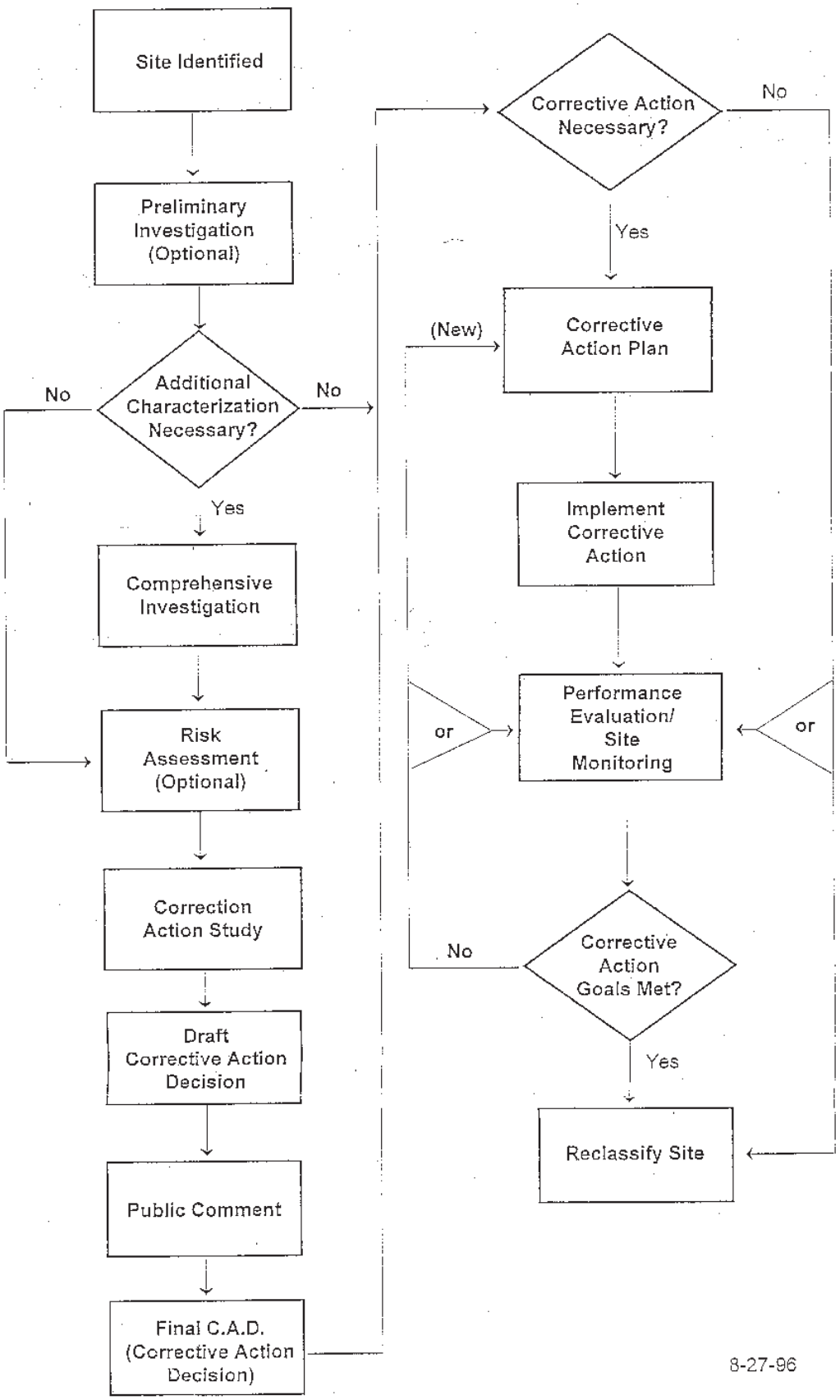
STATE COOPERATIVE PROGRAM PROCESS



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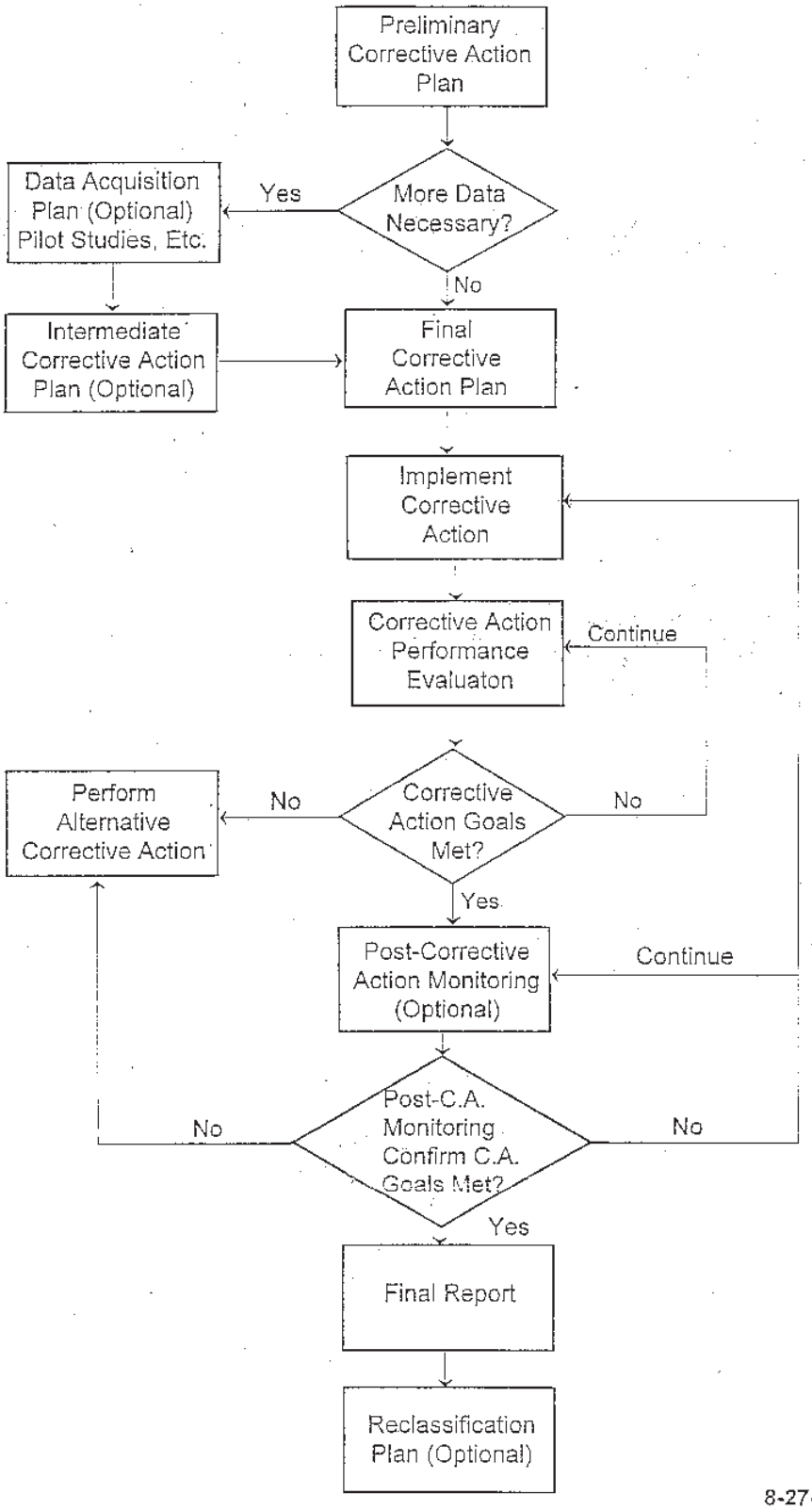
STATE COOPERATIVE PROGRAM PROCESS FOR CORRECTIVE ACTION



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